PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

P2006-07

December 2, 2005

Explanation – Matter in ***italics*** is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: NRS 445B.210 and 445B.300

Section 1. Chapter 445B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 30, inclusive, of this regulation.

Sec. 2. ***" De minimis mercury emissions " means a level of mercury emissions determined by the Director.***

Sec. 3. ***"Effective date of the Nevada mercury air emissions control program" means the date on which the Commission adopts the program.***

Sec. 4. ***"Existing thermal unit that emits mercury" means a thermal unit that emits mercury which is located at a stationary source and was constructed before the effective date of the Nevada mercury air emissions control program.***

Sec. 5. ***"Mercury" means elemental mercury and all compounds of mercury.***

Sec. 6. ***"Mercury early reduction credit" means an extension of time to the otherwise applicable timeframes established for the installation and operation of NvMACT, which is granted by the Director for the installation of additional mercury emissions controls on a thermal unit that emits mercury.***

Sec. 7. ***"Mercury operating permit to construct" means an operating permit signed and issued by the Director which:***

1. Includes the conditions that apply to an existing thermal unit that emits mercury;

2. Authorizes:

(a) The construction of a new thermal unit that emits mercury or the modification of an existing thermal unit that emits mercury; and

(b) An initial period of operation of a proposed new thermal unit that emits mercury or a modification of an existing thermal unit that emits mercury; or

3. Includes the conditions that apply to a thermal unit that emits mercury and the initial period of operation of a thermal unit that emits mercury or a modification to a thermal unit that emits mercury.

Sec. 8. ***"Precious metals mining" has the meaning ascribed to it in industry group 104, gold and silver ores, of the Standard Industrial Classification Manual, 1987 edition. REVISED 12/9/05.***

Sec. 9. ***"Modified thermal unit that emits mercury" means any physical change in or change in the method of operation of a thermal unit that emits mercury:***

1. For which an application is proposed on or after the effective date of the Nevada mercury air emissions control program; and

2. Which increases the amount of mercury emitted to the atmosphere.

Sec. 10. ***"Nevada maximum achievable control technology" means an emission standard or other limitation which reflects the maximum degree of reduction in mercury emissions that the Director determines is achievable by the new, existing or modified emission unit.***

Sec. 11. ***"New thermal unit that emits mercury" means a thermal unit that emits mercury which has obtained a permit that authorizes the construction of the unit on or after the effective date of the Nevada mercury air emissions control program.***

Sec. 12. ***"Phase 1 application" means an application for a mercury operating permit to construct for an existing thermal unit that emits mercury for which the owner or operator requests methods of operation and maintenance for each thermal unit that emits mercury, associated mercury controls, mercury emissions sampling and testing, and methods of monitoring, recordkeeping and reporting.***

Sec. 13. ***"Phase 2 application" means an application for the revision of a mercury operating permit to construct for an existing thermal unit that emits mercury that proposes a NvMACT.***

Sec. 14. ***"Presumptive NvMACT" means the mercury controls identified in section 16 of this regulation.***

Sec. 15. ***"Thermal unit that emits mercury" means an emission unit located at a precious metals mining stationary source that emits or has the potential to emit non-fugitive emissions of mercury generated by direct or indirect sources of heat energy.***

SECTION 16 WILL BE UPDATED WITH THE LIST OF UNITS ON OR BEFORE DECEMBER 29, 2005 ---

Sec. 16. ***"Tier–1 thermal unit that emits mercury" means one of the following:***

1. ***Barrick Goldstrike Mines Inc. – Goldstrike Mine, . . . (add list)***
2. ***Newmont Mining Corporation – Gold Quarry Operations Area, . . . (add list)***
3. ***Newmont Mining Corporation – Twin Creeks Mine, . . . (add list)***
4. ***Placer Dome – Cortez Gold Mine, . . . (add list)***
5. ***Queenstake – Jerritt Canyon Mine, . . . (add list)***

Sec. 17. ***"Tier–2 thermal unit that emits mercury" means an existing thermal unit that emits mercury which emits or has the potential to emit mercury emissions greater than de minimis mercury emissions and that is not a Tier-1 thermal unit that emits mercury.***

Sec. 18. *"Tier–3 thermal unit" means a thermal unit that:*

1. Not considering controls, does not have the potential to emit mercury;

2. Obtains appropriate permit conditions to limit the potential to emit mercury, not considering controls, to an amount not to exceed de minimis mercury emissions; or

3. Has de minimis mercury emissions consistent with the Director's determination.

➥Operating permit conditions for a Tier-3 emission unit shall include a requirement to certify Tier-3 status annually.

Sec. 19. *1. Except as otherwise provided in subsection 2, no owner or operator of a thermal unit that emits mercury may cause or permit the discharge of mercury into the atmosphere from a Tier-1 or a Tier-2 thermal unit that emits mercury without applying NvMACT for mercury emissions control pursuant to the schedules and requirements of sections 2 to 30, inclusive, of this regulation.*

2. No owner or operator of a new thermal unit that emits mercury or a modified thermal unit that emits mercury may cause or permit the discharge of mercury into the atmosphere from a new thermal unit that emits mercury or a modified thermal unit that emits mercury without applying NvMACT for mercury emissions control pursuant to sections 2 to 30, inclusive, of this regulation.

Sec. 20. *1. Except for a Tier-3 thermal unit that emits mercury, a mercury operating permit to construct is required for each existing thermal unit that emits mercury located at a precious metals mining stationary source, pursuant to the schedules and requirements of sections 2 to 30, inclusive, of this regulation.*

2. To establish a new thermal unit that emits mercury or a modified thermal unit that emits mercury at a stationary source, the owner or operator must apply for and obtain a new or revised mercury operating permit to construct prior to construction or modification pursuant to sections 2 to 30, inclusive, of this regulation.

3. A mercury operating permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the original mercury operating permit to construct pursuant to NAC 445B.319.

Sec. 21. *1. The Director will make an initial evaluation of de minimis mercury emissions on or before May 15, 2006 but no later than 60 days after the effective date of the Nevada mercury air emissions control program, whichever is later.*

2. The Director may, upon written request and a satisfactory demonstration by an applicant, determine that the mercury emissions from a thermal unit are de minimis mercury emissions. The Director will make an initial evaluation of de minimis mercury emissions within 60 days of receipt of a written request.

➥ If there are multiple emission units, the Director may, after considering the impact of the combined mercury emissions of multiple emission units, determine one or more of the specific emission units as de minimis.

3. The Director will make public and maintain on file the Director's initial evaluation of de minimis mercury emissions determined as provided for in subsection 1 or 2. The initial evaluation shall be maintained during normal business hours at 901

South Stewart Street, Carson City, Nevada, and in the air quality region where the source is located for 30 days to enable public participation and comment, and the Director shall:

(a) Cause to be published a prominent advertisement in a newspaper or newspapers of general circulation or in a state publication designed to give general public notice;

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and

(d) Establish a 30-day period for comment from the public.

4. The Director will make a final determination of de minimis mercury emissions within 90 days of the date of the notice of the initial evaluation, and make public the final determination in accordance with the provisions of paragraphs (a) to (c), inclusive, of subsection 3.

Sec. 22. *1. An owner or operator of a precious metals mining stationary source must file an application, on a form provided by the Director, and obtain a mercury operating permit to construct for:*

(a) A Tier–1 thermal unit that emits mercury;

(b) A Tier–2 thermal unit that emits mercury; or

(c) A new or modified thermal unit that emits mercury.

2. Not withstanding the requirement of subsection 1, the owner or operator of a Tier-3 thermal unit is not required to file an application to obtain a mercury operating permit to construct. Within 90 days of the date of final notification of determination of de minimis mercury emissions, the owner or operator of a Tier-3 thermal unit must either:

(a) File an application to revise the stationary source's existing operating permit to include annual mercury reporting requirements and any requested limits; or

(b) File an application to convert the stationary source's Class III operating permit to a Class II operating permit, and include annual mercury reporting requirements and any requested limits.

3. An owner or operator of any Tier-1 thermal unit that emits mercury shall file a Phase 1 application with the Director within 90 days of the effective date of the Nevada mercury air emissions control program.

4. An owner or operator of any Tier-2 thermal unit that emits mercury with mercury emissions greater than de minimis shall file a Phase 1 application with the Director within 180 days of the effective date of the Nevada mercury air emissions control program.

5. An owner or operator of a Tier-1 thermal unit that emits mercury or a Tier-2 thermal unit that emits mercury shall file a Phase 2 application with the Director to revise the mercury operating permit to construct within 21 months of the effective date of the Nevada mercury air emissions control program.

6. Within 90 days of the date of final notification of determination of de minimis mercury emissions, the owner or operator of an existing thermal unit that emits mercury which emits or has the potential to emit greater than de minimis mercury emissions and has not filed an application pursuant to subsections 1, 3 and 4 must file

an amended Phase 1 application with the Director to include such Tier-2 thermal unit that emits mercury.

7. An owner or operator of a precious metals mining stationary source must file an application, on a form provided by the Director, and obtain a mercury operating permit to construct for a new thermal unit that emits mercury or a modified thermal unit that emits mercury.

8. For a modified thermal unit that emits mercury for which the owner or operator requests mercury early reduction credit pursuant to subsection 7 of section 25 of this regulation, the owner or operator must file an application within 21 months of the effective date of the program.

Sec. 23. *A mercury operating permit to construct Phase 1 application or an application for a revision of a mercury operating permit to construct for an existing thermal unit that emits mercury must include:*

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact.

2. An identification of each thermal unit that emits mercury.

3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each thermal unit that emits mercury which is a part of the stationary source.

4. An identification and a description of any equipment for the control of mercury, including the mercury controls that are presumptive NvMACT.

5. Limitations on the operation of the stationary source or any standards for work practices which affect emissions of mercury.

6. The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct if the records are kept at a location other than the emitting stationary source.

7. For a Tier-1 thermal unit that emits mercury, a proposed monitoring plan that includes, but is not limited to:

(a) Operation and maintenance procedures that include process and emissions control monitoring and recordkeeping;

(b) A proposed schedule for mercury emissions sampling and testing and tests of performance that will be conducted on an annual basis and pursuant to NAC 445B.252. Initial mercury sampling and testing and tests of performance shall be submitted to the Director no later than December 31, 2006. Following the initial mercury sampling and testing and tests of performance, the plan may request the Director to consider an alternative to the annual frequency or waive the requirement for annual mercury sampling and testing upon adequate demonstration; and

(c) Reporting of mercury emissions on an annual basis. Mercury emissions reported will be based on mercury emissions test data.

➥ Until a complete Phase 2 mercury operating permit to construct application is submitted, the owner or operator of a Tier-1 unit must comply with the proposed monitoring plan.

8. For a Tier-2 thermal unit that emits mercury, a proposed monitoring plan that includes:

(a) Operation and maintenance procedures that include process and emissions control monitoring and recordkeeping;

(b) A proposed schedule for mercury emissions sampling and testing and tests of performance for each thermal unit that emits mercury; and

(c) Reporting of mercury emissions on an annual basis. Mercury emissions reported will be based on mercury emissions test data.

9. Additional mercury emissions controls to be placed on a Tier-1 or Tier-2 thermal unit that emits mercury for which the owner or operator is requesting early reduction credit.

10. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 24. *A mercury operating permit to construct Phase 2 application or an application for a revision of a mercury operating permit to construct for an existing thermal unit that emits mercury must include:*

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact.

2. An identification of each thermal unit that emits mercury.

3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for each thermal unit that emits mercury which is a part of the stationary source.

4. Limitations on the operation of the stationary source or any standards for work practices which affect emissions of mercury.

5. The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct if the records are kept at a location other than the emitting stationary source.

6. For a Tier-1 or a Tier-2 thermal unit that emits mercury, a NvMACT analysis that includes, but is not limited to:

(a) A list of similar emission units in precious metal mining and their associated mercury controls;

(b) Emissions associated with each listed mercury control technology;

(c) The design level of mercury emissions reduction for each listed mercury control technology;

(d) Costs associated with emissions reductions for each listed mercury control technology;

(e) Costs associated with energy for each listed mercury control technology; and

(f) Other environmental impacts for each listed mercury control technology.

7. For a Tier-1 or a Tier-2 thermal unit that emits mercury, a proposed monitoring plan that includes, but is not limited to:

(a) Operation and maintenance procedures that include process and emissions control monitoring and recordkeeping;

(b) A proposed schedule for mercury emissions sampling and testing and tests of performance that will be conducted on an annual basis and pursuant to NAC 445B.252; and

(c) Reporting of mercury emissions on an annual basis. Mercury emissions reported will be based on mercury emissions test data.

➥ *Until a Phase 2 mercury operating permit to construct for a thermal unit that emits mercury is issued or revised, the owner or operator of a Tier-1 or a Tier-2 unit must comply with the proposed monitoring plan.*

8. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 25. *An application for a mercury operating permit to construct or an application for a revision of a mercury operating permit to construct for a new or modified thermal unit that emits mercury must include, but is not limited to:*

1. Information to identify the applicant, including the name and address of the company or the name and address of the plant if different from that of the company, the name of the owner of the company and his agent, and the name and telephone number of the manager of the plant or another appropriate person to contact.

2. An identification of the thermal unit that emits mercury.

3. A description of the fuels, fuel use and raw materials to be used and the rates of production and operating schedules for the thermal unit that emits mercury which is a part of the stationary source.

4. Limitations on the operation of the stationary source or any standards for work practices that affect emissions of mercury.

5. The location of any records that the applicant must keep pursuant to the requirements of the mercury operating permit to construct if the records are kept at a location other than the emitting stationary source.

6. For a new or modified thermal unit that emits mercury, a NvMACT analysis that includes:

(a) A list of similar emission units and their associated mercury controls;

(b) Emissions associated with each listed mercury control technology;

(c) The design level of mercury emissions reduction for each listed mercury control technology;

(d) Costs associated with emissions reductions for each listed mercury control technology;

(e) Costs associated with energy for each listed mercury control technology; and

(f) Other environmental impacts for each listed mercury control technology.

7. For a modified thermal unit that emits mercury for which an application is submitted between the effective date of the Nevada mercury air emissions control program and 21 months after the effective date of the Nevada mercury air emissions control program, the additional mercury emissions controls to be placed on the modified thermal unit that emits mercury for each mercury early reduction credit requested.

8. Other specific information that the Director determines is necessary to carry out, enforce and determine the applicability of all legal requirements.

Sec. 26. *For each Tier-1 or Tier-2 thermal unit that emits mercury, the Director shall:*

1. For a Phase 1 application, within 30 days after the date of receipt of an application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct, determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 30 days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 31st day after the date of receipt, whichever is earlier. Within 180 days after the official date of submittal, the Director shall propose a mercury operating permit to construct or a revision of a mercury operating permit to construct. The proposed mercury operating permit to construct shall include the presumptive NvMACT and identify each request for mercury early reduction credit. For each early reduction credit requested, the Director shall consider the following for each thermal unit that emits mercury:

(a) The best controls available for mercury emissions;

(b) The measures that reduce the volume or eliminate emissions of mercury through process changes, substitution of materials or other modifications;

(c) The enclosure of systems or processes to eliminate mercury emissions;

(d) The collection, capture or treatment of mercury released;

(e) The design, equipment, work practice, or operational standards including requirements for operator training or certification; and

(f) Differences in age, remaining operating life and configurations of similar units. A determination of similar units may take into account ore mercury concentration, size of units and other relevant factors; or

(g) Any combination of (a) to (f), inclusive.

2. For a Phase 2 application, within 30 days after the date of receipt of an application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct, determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 30 days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 31st day after the date of receipt, whichever is earlier. Within 9 months after the official date of submittal, the Director shall propose a mercury operating permit to construct or a revision of a mercury operating permit to construct. The proposed mercury operating permit to construct shall include a determination of NvMACT. For each NvMACT determination, the Director shall consider the following for each thermal unit that emits mercury:

(a) The maximum degree of reduction in emissions of mercury that is achievable taking into consideration the cost of achieving such emissions reduction and environmental impacts and energy requirements;

(b) The measures which reduce the volume or eliminate emissions of mercury through process changes, substitution of materials or other modifications;

(c) The enclosure of systems or processes to eliminate mercury emissions,

(d) The collection, capture or treatment of mercury released;

(e) The design, equipment, work practice, or operational standards including requirements for operator training or certification; and

(f) Differences in age, remaining operating life and configurations of similar units. A determination of similar units may take into account ore mercury concentration, size of units and other relevant factors; or

(g) Any combination of (a) to (f), inclusive.

3. Request additional information if, after the official date of submittal, the Director discovers that additional information is required to comply with sections 2 to 30, inclusive, of this regulation. The applicant must provide in writing any additional information that the Director requests within the time specified in the request of the Director. Any delay in the submittal of the requested information will result in a corresponding delay in the action of the Director on the application submitted to the Director.

4. Make public and maintain on file the Director's review and the proposed conditions for the mercury operating permit to construct. The Director's review and proposed conditions for the mercury operating permit to construct shall be maintained during normal business hours at 901 South Stewart Street, Carson City, Nevada, and in the air quality region where the source is located for 30 days to enable public participation and comment, and the Director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and

(d) Establish a 30-day period for comment from the public.

5. In addition to the notice requirements set forth in subsection 4, the notice required for a mercury operating permit to construct or for a revision of a mercury operating permit to construct must identify:

(a) The stationary source and the name and address of the applicant;

(b) The name and address of the authority processing the mercury operating permit to construct;

(c) The activity or activities involved in the mercury operating permit to construct and the change of mercury emissions involved in any revision of the mercury operating permit to construct;

(d) The presumptive NvMACT or the determination of NvMACT as appropriate;

(e) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions

for the mercury operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the mercury operating permit to construct and which are relevant to the proposed mercury operating permit to construct; and

(f) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

6. Receive all comments concerning the Director's review and the proposed mercury operating permit to construct or revision of the proposed mercury operating permit to construct. All comments must be submitted to the Director in writing within 30 days after the public announcement. The Director shall give notice of any public hearing at least 30 days before the date of the hearing. The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.

7. Within 12 months after the official date of submittal of a Phase 1 application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct, take final action on the proposed mercury operating permit to construct or the revision of the proposed mercury operating permit to construct. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) Comments made during public hearings concerning the application and the proposed mercury operating permit to construct; and

(c) Information submitted by proponents of the project.

8. Within 16 months after the official date of submittal of a Phase 2 application for the revision of a mercury operating permit to construct, take final action on the proposed revision to the mercury operating permit to construct. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) Comments made during public hearings concerning the application and the proposed mercury operating permit to construct; and

(c) Information submitted by proponents of the project.

Sec. 27. *For each new or modified thermal unit that emits mercury, the Director shall:*

1. Within 30 days after the date of receipt of an application for a mercury operating permit to construct or for the revision of a mercury operating permit to construct, determine if the application is complete. If substantial additional information is required, the Director shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Director shall determine the application to be complete. Unless the Director determines that the application is incomplete within 30 days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the Director determines that the application is complete or the 31st day after the date of receipt, whichever is earlier. Within 180 days after the official date of submittal, the Director shall propose a mercury operating permit to construct or a revision of a mercury operating permit to construct.

2. Request additional information if, after the official date of submittal, the Director discovers that additional information is required to comply with sections 2 to 30, inclusive, of this regulation. The applicant must provide in writing any additional information that the Director requests within the time specified in the request of the Director. Any delay in the submittal of the requested information will result in a corresponding delay in the action of the Director on the application submitted to the Director.

3. Make public and maintain on file the Director's review and proposed conditions for the mercury operating permit to construct or the revision of a mercury operating permit to construct. The proposed mercury operating permit to construct or revision of a mercury operating permit to construct shall be maintained during normal business hours at 901 South Stewart Street, Carson City, Nevada, and in the air quality region where the source is located for 30 days to enable public participation and comment, and the Director shall:

(a) Cause to be published a prominent advertisement in a newspaper of general circulation in the area in which the stationary source is located or in a state publication designed to give general public notice;

(b) Provide written notice to persons on a mailing list developed by the Director, including those persons who request in writing to be included on the list;

(c) Provide notice by other means if necessary to ensure that adequate notice is given to the public; and

(d) Establish a 30-day period for comment from the public.

4. In addition to the requirements set forth in subsection 3, the notice required for a mercury operating permit to construct or for a revision of a mercury operating permit to construct must identify:

(a) The stationary source and the name and address of the applicant;

(b) The name and address of the authority processing the mercury operating permit to construct;

(c) The activity or activities involved in the mercury operating permit to construct and the change of emissions involved in any revision of the mercury operating permit to construct;

(d) The Director's determination of the NvMACT;

(e) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the proposed conditions for the mercury operating permit to construct, the application, all relevant supporting materials and all other materials which are available to the authority that is processing the mercury operating permit to construct and which are relevant to the proposed mercury operating permit to construct; and

(f) A brief description of the procedures for public comment and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

5. Receive all comments concerning the Director's review and the proposed mercury operating permit to construct or revision of the proposed mercury operating permit to construct in writing 30 days after the public announcement. The Director shall give notice of any public hearing at least 30 days before the date of the hearing.

The Director shall keep a record of the names of any persons who made comments and of the issues raised during the process for public participation.

6. Take final action on the proposed mercury operating permit to construct or the revision of the proposed mercury operating permit to construct within 60 days after the close of the period for public participation or 60 days after the hearing if a hearing is scheduled pursuant to this section, whichever is later. The Director shall make his decision by taking into account:

(a) Written comments from the public;

(b) Comments made during public hearings concerning the application and the proposed mercury operating permit to construct; and

(c) Information submitted by proponents of the project.

Sec. 28. *For each Tier-1 or Tier-2 thermal unit that emits mercury, the Director shall:*

1. Cite the legal authority for each condition contained in a mercury operating permit to construct.

2. Include the following conditions in a mercury operating permit to construct:

(a) The holder of the mercury operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation;

(b) Each of the conditions and requirements of the mercury operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect;

(c) The holder of the mercury operating permit to construct shall comply with all conditions of the mercury operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the mercury operating permit to construct by the Director; or

(3) The reopening or revising of the mercury operating permit to construct by the holder of the mercury operating permit to construct as directed by the Director;

(d) The need to halt or reduce activity to maintain compliance with the conditions of the mercury operating permit to construct is not a defense to noncompliance with any condition of the mercury operating permit to construct;

(e) The Director may revise, revoke and reissue, reopen and revise, or terminate the mercury operating permit to construct for cause;

(f) The mercury operating permit to construct does not convey any property rights or any exclusive privilege;

(g) The holder of the mercury operating permit to construct shall provide the Director, within a reasonable time, with any information that the Director requests in writing to determine whether cause exists for revoking or terminating the mercury operating permit to construct, or to determine compliance with the conditions of the mercury operating permit to construct;

(h) The holder of the mercury operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the mercury operating permit to construct where:

(I) The thermal unit that emits mercury is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the mercury operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the mercury operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the mercury operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the mercury operating permit to construct or applicable requirements;

(i) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the mercury operating permit to construct are true, accurate and complete;

(j) All applicable emissions control requirements including:

(1) From the Phase 1 application for a:

(i) Tier-1 thermal unit that emits mercury, a presumptive NvMACT; and/or

(ii) Tier-1 or Tier-2 thermal unit that emits mercury which has applied for a mercury early reduction credit, the early reduction credit mercury control. To receive the mercury early reduction credit the owner or operator must install and operate the mercury early reduction control before the required date to file a Phase 2 application pursuant to subsection 6 of section 22 of this regulation.

(2) From the Phase 2 application:

(i) For a Tier-1 or Tier-2 thermal unit that emits mercury which has applied for a mercury early reduction credit, the early reduction credit mercury control.

(ii) Except as provided in sub-subparagraph (iii) of this subparagraph, for a Tier-1 or Tier-2 thermal unit that emits mercury, a NvMACT determined from the Phase 2 application. The NvMACT will be installed no later than 24-months from the date of issuance of the revised mercury operating permit to construct.

(iii) For a Tier-1 or Tier-2 thermal unit that emits mercury which has received a mercury early reduction credit, the NvMACT will be installed no later than 48 months from the date of issuance of the revised mercury operating permit to construct;

(k) A monitoring plan for each thermal unit that emits mercury;

(l) Adequate recordkeeping and reporting requirements as deemed by the Director; and

(m) Any other requirements deemed necessary by the Director.

Sec. 29. *For each new or modified thermal unit that emits mercury, the Director shall:*

1. Cite the legal authority for each condition contained in a mercury operating permit to construct.

2. Include the following conditions in a mercury operating permit to construct:

(a) The expiration date of the mercury operating permit to construct must be defined as described in section 30 of this regulation;

(b) The holder of the mercury operating permit to construct shall retain records of all required monitoring data and supporting information for 5 years after the date of the sample collection, measurement, report or analysis. Supporting information includes, without limitation, all records regarding calibration and maintenance of the monitoring equipment and all original strip-chart recordings for continuous monitoring instrumentation;

(c) Each of the conditions and requirements of the mercury operating permit to construct is severable, and if any is held invalid, the remaining conditions and requirements continue in effect;

(d) The holder of the mercury operating permit to construct shall comply with all conditions of the mercury operating permit to construct. Any noncompliance constitutes a violation and is a ground for:

(1) An action for noncompliance;

(2) The revoking and reissuing, or the terminating, of the mercury operating permit to construct by the Director; or

(3) The reopening or revising of the mercury operating permit to construct by the holder of the mercury operating permit to construct as directed by the Director;

(e) The need to halt or reduce activity to maintain compliance with the conditions of the mercury operating permit to construct is not a defense to noncompliance with any condition of the mercury operating permit to construct;

(f) The Director may revise, revoke and reissue, reopen and revise, or terminate the mercury operating permit to construct for cause;

(g) The mercury operating permit to construct does not convey any property rights or any exclusive privilege;

(h) The holder of the mercury operating permit to construct shall provide the Director, within a reasonable time, with any information that the Director requests in writing to determine whether cause exists for revoking or terminating the mercury operating permit to construct, or to determine compliance with the conditions of the mercury operating permit to construct;

(i) The holder of the mercury operating permit to construct shall allow the Director or any authorized representative of the Director, upon presentation of credentials, to:

(1) Enter upon the premises of the holder of the mercury operating permit to construct where:

(I) The thermal unit that emits mercury is located;

(II) Activity related to emissions is conducted; or

(III) Records are kept pursuant to the conditions of the mercury operating permit to construct;

(2) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the mercury operating permit to construct;

(3) Inspect, at reasonable times, any facilities, practices, operations or equipment, including any equipment for monitoring or controlling air pollution, that are regulated or required pursuant to the mercury operating permit to construct; and

(4) Sample or monitor, at reasonable times, substances or parameters to determine compliance with the conditions of the mercury operating permit to construct or applicable requirements;

(j) A responsible official of the stationary source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the mercury operating permit to construct are true, accurate and complete;

(k) All applicable emissions control requirements including:

(1) For a new or modified thermal unit that emits mercury, a NvMACT determined from the application;

(2) For a modified thermal unit that emits mercury, which has applied for a mercury early reduction credit in the application, the early reduction credit mercury control. To receive the mercury early reduction credit the owner or operator must install and operate the mercury early reduction control on or before 21 months after the effective date of the Nevada mercury air emissions control program. The NvMACT will be installed no later than 48 months from the date of issuance of the revised mercury operating permit to construct;

(l) A monitoring plan for each thermal unit that emits mercury;

(m) Adequate recordkeeping and reporting requirements as deemed by the Director; and

(n) Any other requirements deemed necessary by the Director.

Sec. 30. ***For a new or modified thermal unit that emits mercury:***

1. If construction will occur in one phase, a mercury operating permit to construct for a new or modified thermal unit that emits mercury expires if construction is not commenced within 18 months after the date of issuance thereof or if construction of the thermal unit that emits mercury is delayed for 18 months after initiated. The Director may extend the date on which the construction may be commenced upon a showing that the extension is justified.

2. If construction will occur in more than one phase, the projected date of the commencement of construction of each phase of construction must be approved by the Director. A mercury operating permit to construct expires if the initial phase of construction is not commenced within 18 months after the projected date of the commencement of construction approved by the Director. The Director may extend only the date on which the initial phase of construction may be commenced upon a showing that the extension is justified.

Sec. 31. NAC 445B.001 is hereby amended to read as follows:

445B.001 As used in NAC 445B.001 to 445B.3497, inclusive, ***and sections 2 to 30, inclusive, of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC 445B.002 to 445B.211, inclusive, ***and sections 2 to 30, inclusive, of this regulation*** have the meanings ascribed to them in those sections.

Sec. 32. NAC 445B.038 is hereby amended to read as follows:

445B.038 "Class III source" means a stationary source which is subject to the requirements set forth in NAC 445B.001 to 445B.3497, inclusive, and:

1. Which emits or has the potential to emit, individually or in combination, a total of not more than 5 tons per year of PM_{10}, NO_x, SO_2, VOC and H_2S;
2. Which emits less than 1,000 pounds of lead per year;
3. Which is not subject to the requirements of 42 U.S.C. §§ 7661 to 7661f, inclusive;
4. Which is not subject to the requirements of 40 C.F.R. Part 60;
5. Which is not subject to the requirements of 40 C.F.R. Part 61;
6. Which is not a temporary source;
7. Which is not located at or a part of another stationary source; [~~and~~]
8. ***Which does not contain a thermal unit that emits mercury; and***
9. Whose owner or operator:

(a) Is not seeking a limitation on emissions to avoid the requirements of 40 C.F.R. Part 63; or

(b) Is not required to obtain an operating permit to operate the stationary source solely to comply with NAC 445B.22037 relating to surface area disturbances.

Sec. 33. NAC 445B.123 is hereby amended to read as follows:

445B.123 "Operating permit" has the meaning ascribed to it in NRS 445B.145. Unless otherwise specifically stated, the term includes a Class I, a Class II and a Class III operating permit [~~and~~] ***,*** an operating permit to construct ***and a mercury operating permit to construct***.

Sec. 34. NAC 445B.211 is hereby amended to read as follows:

445B.211 The abbreviations used in NAC 445B.001 to 445B.3497, inclusive, have the following meanings:

BACT	best available control technology
Btu	British thermal unit
C.F.R.	Code of Federal Regulations
CO2	carbon dioxide
°F	degree Fahrenheit
Hg	mercury
H2S	hydrogen sulfide
lb	pound
NO	nitric oxide
NOx	nitrogen oxides
NvMACT	***Nevada maximum achievable control technology***
O2	oxygen
ppm	parts per million
SO2	sulfur dioxide
VOC	volatile organic compound

Sec. 35. NAC 445B.287 is hereby amended to read as follows:

445B.287 1. Except as otherwise provided in subsection*s* 2 ***and 3,*** and in NAC 445B.288, an operating permit, operating permit to construct or permit to construct is required for each stationary source and:

(a) If a stationary source is a Class I source:

(1) A revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3425, 445B.344 or 445B.3441 before the stationary source may be modified; or

(2) A revision of the operating permit to construct is required pursuant to the requirements of paragraph (a) of subsection 1 of NAC 445B.3361 before the stationary source may be modified,

➥ as appropriate.

(b) If a stationary source is a Class II source, a revision of the operating permit or the permit to construct is required pursuant to the requirements of NAC 445B.3465 before the stationary source may be modified.

(c) If a stationary source is a Class III source, a revision of the operating permit is required pursuant to the requirements of NAC 445B.3493 before the stationary source may be modified.

2. ***The owner or operator of a precious metals mining stationary source that contains one or more thermal units that emit mercury must comply with the provisions of sections 2 to 30, inclusive, of this regulation. The provisions of NAC 445B.288 do not apply to a thermal unit that emits mercury.***

3. A Class I source is not subject to the provisions of subparagraph (1) of paragraph (a) of subsection 1 if the source is not a major source, an affected source or a solid waste incineration unit required to obtain a permit pursuant to 42 U.S.C. § 7429(e). For a Class I source which is not a major source and which subsequently becomes subject to a standard or other requirement under 42 U.S.C. § 7411 or 7412, the Administrator will determine whether to exempt the source from the requirement to obtain a Class I operating permit at the time that the new standard is adopted.

[~~3.~~] ***4.*** An operating permit, operating permit to construct or permit to construct may not be transferred from one owner or piece of equipment to another. An owner or operator may apply for an administrative amendment reflecting a change of ownership or the name of the stationary source for the effective time remaining on the original operating permit pursuant to NAC 445B.319.

[~~4.~~] ***5.*** For the purposes of this section, "permit to construct" means a document issued and signed by the Director before November 1, 1995, certifying that:

(a) Adequate empirical data for a stationary source has been received and constitutes approval of location; or

(b) All portions of NAC 445B.305 to 445B.314, inclusive, and 445B.3395, and any other provisions of NAC 445B.001 to 445B.3497, inclusive, have been complied with and constitute approval of location and for construction.

Sec. 36. NAC 445B.318 is hereby amended to read as follows:

445B.318 1. A***n*** [~~separate~~] operating permit is required for each new or existing stationary source.

2. Application for the issuance of an operating permit or a replacement for a lost or damaged operating permit must be submitted in writing to the Director on the exact form provided by him.

3. An operating permit must be granted if the Director finds from a stack emission test or other appropriate test and other relevant information that use of the stationary source will not result in any violation of the air quality regulations or the provisions of 40 C.F.R. § 52.21 or 40 C.F.R. Parts 60 and 61, Prevention of Significant Deterioration, New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants adopted by reference in NAC 445B.221.

4. A denial of an application for an operating permit must be accompanied by a statement of the reasons therefor***e***, and if the Director has relied in his decision upon information not contained in the application, the statement of reasons must identify and state the substance of such information.

5. Operating permits must be posted conspicuously at or near the stationary source.

Sec. 37 NAC 445B.327 is hereby amended to read as follows: (REVISED 12/9/05)

445B.327 1. Except as otherwise provided in this section, if a stationary source is not subject to the permitting requirements of 40 C.F.R. § 52.21, as incorporated by reference by NAC 445B.221, the fees for an operating permit are as follows:

(a) Class I operating permit to construct..... $20,000
(b) Conversion of an operating permit to construct into a Class I operating permit involving only one phase..... 5,000
(c) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase) ……..5,000
(d) Modification to an operating permit to construct..... 5,000
(e) Revision of an operating permit to construct..... 5,000
(f) Class I operating permit..... 30,000
(g) Significant revision of a Class I operating permit..... 20,000
(h) Minor revision of a Class I operating permit..... 5,000
(i) Renewal of a Class I operating permit..... 5,000
(j) Class II operating permit..... 3,000
(k) Revision of a Class II operating permit..... 2,000
(l) Renewal of a Class II operating permit..... 2,000
(m) Class II general permit..... 400
(n) Class III operating permit..... 300
(o) Revision of a Class III operating permit..... 200
(p) Renewal of a Class III operating permit..... 250
(q) Surface area disturbance permit..... 400
(r) Revision of a surface area disturbance permit..... 200
(s) Administrative amendment of an operating permit..... 200
(t) Replacement of a lost or damaged operating permit to construct or an operating permit ……..... 200
(u) Request for change of location of an emission unit..... 100
(v) Administrative revision to a Class I operating permit..... 500
(w) For each designation of a clean unit listed in a Class I operating permit to construct for the designation of a clean unit..... 5,000

(x) For each approval of a pollution control project listed in a Class I operating permit to construct for the approval of a pollution control project..... 7,500

(y) Class I operating permit to construct for the approval of a plantwide applicability limitation 20,000

➥ An applicant must pay the entire fee when he submits an application to the Director.

2. The fees for a mercury operating permit to construct as required pursuant to sections 2 to 30, inclusive, of this regulation shall be determined as follows:

(a) For a Phase I application, the following equation shall be used;

$$X = \frac{50{,}000}{S},$$

where "X" means the application fee in dollars, and "S" means the number of precious metal mining stationary sources that submit a Phase I application. "S" shall be determined by the Director on or before 104 days after the effective date of the program. Upon such determination, the Director shall notify the applicant of the amount of the application fee. An applicant must pay the entire fee when he submits the application to the Director or within 30 days after receipt of the Director's notification, whichever occurs later.

(b) For an application for a mercury operating permit to construct or an application for a revision of a mercury operating permit to construct for a new or modified thermal unit that emits mercury, the fee is $5,000 per application. An applicant must pay the entire fee when he submits the application to the Director.

[~~2.~~] ***3.*** The fee to revise an operating permit so that the operating permit is consistent with any guidelines established by the Division of Environmental Protection of the State Department of Conservation and Natural Resources pursuant to NAC 445B.255 is $1,000. An applicant must pay the entire fee when he submits an application to the Director.

[~~3.~~] ***4.*** Except as otherwise provided in this section, if a stationary source is subject to the permitting requirements of 40 C.F.R. § 52.21, as incorporated by reference by NAC 445B.221, the owner or operator of that stationary source must obtain an operating permit. The fees for such an operating permit are as follows:

(a) Operating permit for a stationary source subject to the program for the prevention of significant deterioration of air quality..... $50,000

(b) Revision of an operating permit for a stationary source subject to the permitting requirements of 40 C.F.R. § 52.21 to authorize a major modification of the stationary source 50,000

(c) Class I operating permit to construct..... 50,000

(d) Conversion of an operating permit to construct into a Class I operating permit involving only one phase 5,000

(e) Conversion of an operating permit to construct into a Class I operating permit involving two or more phases (per phase) 5,000

(f) Revision of an operating permit to construct..... 5,000

(g) Administrative amendment of an operating permit or operating permit to construct 200

(h) Replacement of a lost or damaged operating permit to construct or an

operating permit ……..... 200
(i) Request for the change of location of an emission unit..... 100
(j) Administrative revision to a Class I operating permit.....…..... 500
➥ An applicant must pay the entire fee when he submits an application to the Director.

[~~4.~~] ***5.*** If no changes need to be made to convert an operating permit to construct into a Class I operating permit, no fee will be assessed.

[~~5.~~] ***6.*** Except as otherwise provided in this subsection, the annual fee based on emissions for a stationary source is $5.60 per ton times the total tons of each regulated pollutant emitted during the preceding calendar year. The annual fee based on emissions does not apply to:

(a) Emissions of carbon monoxide; or

(b) Class III stationary sources.

[~~6.~~] ***7.*** To determine the fee set forth in subsection [~~5~~] ***6***:

(a) Emissions must be calculated using:

(1) The emission unit's actual operating hours, rates of production and in-place control equipment;

(2) The types of materials processed, stored or combusted; and

(3) Data from:

(I) A test for emission compliance;

(II) A continuous emission monitor;

(III) The most recently published issue of Compilation of Air Pollutant Emission Factors, EPA Publication No. AP-42; or

(IV) Other emission factors or methods which the Director has validated; or

(b) If paragraph (a) does not apply to a stationary source that was in operation during the preceding calendar year, emissions must be calculated using the permitted allowable emissions for that stationary source.

[~~7.~~] ***8.*** The annual fee for maintenance of a stationary source is:

(a) For a Class I source.....…..... $12,500
(b) For a Class II source that has the potential to emit 50 tons or more per year of any one regulated air pollutant except carbon monoxide 3,000
(c) For a Class II source that has the potential to emit 25 tons or more per year but less than 50 tons per year of any one regulated air pollutant except carbon monoxide……..... 1,000
(d) For a Class II source that has the potential to emit less than 25 tons per year of any one regulated air pollutant except carbon monoxide.....…..... 250
(e) For a Class III source.....…..... 250
(f) For a surface area disturbance.....….....…..... 250

9. In addition to the provisions of subsection 8, precious metal mining stationary sources must submit an annual maintenance fee for the following types of thermal units that emit mercury: roasters; autoclaves; carbon reactivation kilns; mercury retorts; electrowinning; and induction furnaces, including refining and mill furnaces and excluding analytical laboratory furnaces. The annual fee for maintenance of a stationary source with a thermal unit that emits mercury shall be calculated for each thermal unit that emits mercury, limited to the types of units specified in this subsection, as follows:

(a) For state fiscal year 2007,

$$Y_{2007} = \frac{250{,}000}{U_{2007}},$$

where "Y_{2007}" means the annual maintenance fee per unit in dollars, and "U_{2007}" means the total number of thermal units that emit mercury statewide, which are of a type specified in this subsection. "U_{2007}" shall be determined by the Director on or before May 1, 2006.

(b) For all state fiscal years after 2007,

$$Y = \frac{250{,}000}{U},$$

where "Y" means the annual maintenance fee per unit in dollars, and "U" means the total number of thermal units that emit mercury statewide, which are of a type specified in this subsection, that have obtained a mercury operating permit to construct. "U" shall be determined by the Director on or before May 1 of the immediately preceding state fiscal year, annually.

[~~8.~~] ***10.*** The State Department of Conservation and Natural Resources shall collect all fees required pursuant to subsections [~~5 and 7~~] ***6, 8*** and ***9*** not later than July 1 of each year.

[~~9.~~] ***11.*** Except as otherwise provided in this subsection, the owner or operator of a source who does not pay his annual fee installments within 30 days after the date on which payment becomes due will be assessed a late penalty in the amount of 25 percent of the amount of the fees due. The late fee must be paid in addition to the annual fees. The late penalty set forth in this subsection does not apply if, at the time that the late fee would otherwise be assessed, the owner or operator is in negotiations with the Director concerning his annual fees.

Sec. 38. NAC 445B.3361 is hereby amended to read as follows:

445B.3361 1. To establish a new Class I stationary source or modify an existing Class I stationary source, the owner or operator of a proposed new Class I stationary source or the existing Class I stationary source must:

(a) ***Notwithstanding paragraph (b) of this subsection:***

(i) Apply for and obtain a new or revised operating permit to construct pursuant to NAC 445B.001 to 445B.3497, inclusive; or

[~~(b)~~] ***(ii)*** Apply for and obtain a new or revised Class I operating permit pursuant to NAC 445B.001 to 445B.3497, inclusive.

(b) Apply for and obtain a new or revised mercury operating permit to construct pursuant to the provisions of sections 2 to 30, inclusive, of this regulation, for mercury emissions from a thermal unit that emits mercury.

2. To obtain a designation for an emission unit as a clean unit, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the designation of a clean unit pursuant to NAC 445B.001 to 445B.3497, inclusive.

3. To obtain the approval of a pollution control project as specified in 40 C.F.R. § 52.21(z)(1), the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of a pollution control project pursuant to NAC 445B.001 to 445B.3497, inclusive, before the owner or operator begins actual construction of the pollution control project.

4. To establish a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a Class I operating permit to construct for the approval of the plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive. To revise or renew a Class I operating permit to construct for the approval of a plantwide applicability limitation, the owner or operator of a Class I stationary source must apply for and obtain a revised or renewed Class I operating permit to construct for the approval of a plantwide applicability limitation pursuant to NAC 445B.001 to 445B.3497, inclusive.

5. Except as otherwise provided in subsection 7, if an owner or operator obtains an operating permit to construct, the owner or operator is not required to obtain an operating permit or revised operating permit before commencing initial construction, start-up and operation of the proposed new Class I stationary source or the modification to the existing Class I stationary source.

6. Except as otherwise provided in this subsection ***,*** [~~and~~] subsection 7 [~~,~~] ***and subsection 8,*** if an owner or operator has a valid operating permit to construct, the owner or operator may continue to operate a new Class I stationary source or modifications to an existing Class I stationary source under that operating permit to construct if the owner or operator submits a complete application for a Class I operating permit within 12 months after the date of initial start-up of the new Class I stationary source or modifications to the existing Class I stationary source. The provisions of this subsection do not apply to:

(a) A Class I operating permit to construct for the designation of a clean unit. A Class I operating permit to construct for the designation of a clean unit must be incorporated into the Class I operating permit pursuant to 40 C.F.R. § 52.21(y)(8).

(b) A Class I operating permit for the approval of a pollution control project.

(c) A Class I operating permit to construct for the approval of a plantwide applicability limitation.

7. If the conditions of an existing Class I operating permit would prohibit the construction or change in operation of the existing Class I stationary source and the owner or operator is not seeking to revise the Class I operating permit at the Class I stationary source pursuant to paragraph (b) of subsection 1, the owner or operator must concurrently:

(a) Obtain a Class I operating permit to construct ***, or if applicable, a mercury operating permit to construct,*** for the construction or change in operation of the existing Class I stationary source; and

(b) Obtain an administrative revision to an operating permit to incorporate the conditions of the Class I operating permit to construct into the existing Class I operating permit pursuant to NAC 445B.3441 before commencing with the construction or change in operation of the existing Class I stationary source.

8. If an owner or operator has a valid mercury operating permit to construct, the owner or operator may continue to operate the thermal unit that emits mercury located

at an existing Class I stationary source under the mercury operating permit to construct if the owner or operator submits a complete application to revise the existing Class I operating permit within 12 months after the date of the NvMACT contained in the mercury operating permit to construct.

Sec. 39. NAC 445B.3453 is hereby amended to read as follows:

445B.3453 1. ***Except as otherwise provided in subsection 3,*** [~~An~~] ***an*** owner or operator of any stationary source that is not subject to the requirements of NAC 445B.337 or 445B.3375 must submit an application for and obtain a Class II operating permit or, if applicable, a Class III operating permit pursuant to NAC 445B.3485.

2. For a proposed stationary source or a proposed modification to a stationary source that is not subject to the requirements of NAC 445B.337 or 445B.3375, an owner or operator must file an application and obtain a Class II operating permit or a revision to an existing Class II operating permit or, if applicable, a Class III operating permit or a revision to an existing Class III operating permit pursuant to NAC 445B.3485, before commencing construction of the proposed stationary source or the proposed modification.

3. The owner or operator of a precious metals mining stationary source that contains one or more thermal units that emit mercury at a Class II source must comply with the provisions of sections 2 to 30, inclusive, of this regulation.